IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2671 OF 2004

Bank of India Plaintiff

versus

Shailesh Himmatlal Kothari
and another Defendant

Ms.Naseem Patrawala i/by P.Mehta Mithi & Co. for plaintiff.

None for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th July 2005

PC :

1. Ms.Patrawala appearing for plaintiff tenders affidavit proving service of writ of summons on the defendants. The defendants have duly acknowledged receipt of the packet containing writ of summons. They have failed to file appearance through any advocate or otherwise within time stipulated by law. Affidavit proving service taken on record marked "X" for identification. Original documents along with list marked "X-1" for identification.

2. It is pointed out by the learned advocate that the suit is filed on the basis of a Demand Promissory Note executed by the defendants in lieu of temporary over draft facility of Rs.4.00 lakh. It is clear that the defendants have availed of the facility and have failed to repay the amounts thereunder. The promissory note is at Exhibit-A. The said promissory note is for a sum of Rs.4.00 lakh. It is pointed out that the date of said promissory note is 20th December 2001. Present suit is filed on 2nd August 2004 and therefore, the claim is not barred by limitation. After perusal of the averments in the plaint I am satisfied that the plaintiff bank can invoke Order XXXVII of Code of Civil Procedure and maintain present suit. There is no defence to the claim inasmuch as even prior to the filing of the suit a notice was sent which was duly served but there is no compliance with the requisitions contained therein.

3. Accordingly there shall be a decree as prayed. Refund of court fees and computation of advocates' costs would be as per rules. Certified copy of the decree is expedited.

(S.C.DHARMADHIKARI, J.)